No. 21738

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM EDWARD UNSWORTH,

Appellee,

vs.

CLARENCE T. GLADDEN, Warden,
Oregon State Penitentiary,

Appellant.

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APPELLANT'S BRIEF

Appeal from the United States District Court

For the District of Oregon

HONORABLE GUS J. SOLOMON

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STATEMENT OF JURISDICTION OF UNITED STATES DISTRICT COURT

This is an appeal from an order by the Honorable Gus J. Solomon, Presiding Judge of the United States District Court for the District of Oregon, dated December 13, 1966, ordering that a writ of habeas corpus issue directing the appellant to release the appellee from custody.

On or about April 15, 1962, petitioner was arrested for the killing of one Tony Moore in Beatty, a village in Klamath County, Oregon. He was subsequently tried and convicted of second-degree murder, and sentenced to life imprisonment. On appeal the Supreme Court of Oregon reversed the conviction and remanded for a new trial, State v. Unsworth, 235 Or 234, 384 P2d 207 (1963), on the grounds that error had been committed with respect to the admission of hearsay evidence.

The district attorney for Klamath County resubmitted the matter to the grand jury which again returned an indictment. Petitioner was again tried and convicted of second-degree murder and again appealed to the Oregon Supreme Court, State v. Unsworth, 240 Or 453, 402 P2d 507 (1965). The Court affirmed the conviction, holding that:

> (a) Petitioner's oral statements were not elicited by the officers and therefore not excludable under Escobedo v. Illinois, 378 US 478, 84 S Ct 1758, 12 L Ed 2d 977 (1964).

(b) That by taking the stand and testifying to substantially the same as contained in his written statements, petitioner waived any objections to the admission into evidence of the written statements on the grounds of not being advised of his right to counsel or to remain silent.

(c) For the same reason as set forth in (b), petitioner was not prejudiced by failure of the Court to make an independent determination of voluntariness before admitting the statement into evidence.

Petitioner did not on the appeal raise either the admissibility of oral statements made while intoxicated, nor the failure of the trial court to instruct the jury that less weight should be given to such statements.

Appellee then filed a petition for a writ of habeas corpus pursuant to 28 U.S.C., §§ 2241-2254, which petition was superseded by a Pre-Trial Stipulation and Order, the pertinent issues, in paraphrase, being set forth as follows:

1. Do Escobedo and Jackson v. Denno apply retroactively to petitioner's case?

2. If so, did petitioner waive his constitutional rights under these decisions?

3. If Escobedo is retroactive, and petitioner's rights were not waived, were the Escobedo requirements observed with respect to petitioner's written and oral statements?

4. If Jackson v. Denno is retroactive, and petitioner's rights thereunder were not waived, did the Court comply with the constitutional requirements of that decision?

5. Was there sufficient evidence that the killing was intentional rather than accidental to satisfy the constitutional guarantee of due process?

In his opinion accompanying the Order from which the instant appeal is taken, the District Court held, in summary:

(a) The matter was properly before the United States District Court since Unsworth had no recourse to post conviction relief as his lawyer could have raised the issue of intoxicated statements on appeal, and because the issue was implicit in his contention on appeal that the statements were inadmissible.

(b) Since Johnson v. New Jersey, 384 US 719 (1966), Escobedo does not apply retroactively to petitioner's case, and his statement is not inadmissible for that reason.

(c) Petitioner did not waive his constitutional rights as to the written statement, however, by taking the stand and testifying substantially to the same effect.

(d) Had petitioner received a hearing out of the presence of the jury on voluntariness, it might have been unnecessary for him to take the stand. (Implicit, of course, is the denial of Jackson vs. Denno safeguards.)

(e) The oral statements by petitioner at the time of his arrest were inadmissible in that he was too intoxicated to make a voluntary statement.

(f) Petitioner was deprived of his federally protected constitutional rights when the court failed to warn the jury to give less weight to oral and written statements made while under the influence of alcohol than to statements made while he was sober.

(g) The oral statements made at the time of arrest provided the basis for the jury finding that the killing was intentional.

JURISDICTION OF THE COURT OF APPEALS FOR THE NINTH CIRCUIT TO HEAR THE APPEAL

On January 9, 1967, appellant filed his notice of appeal with the Clerk of the United States District Court in Portland, Oregon.

This Court has jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253.

APPELLANT'S STATEMENT OF THE CASE

On the evening of April 15, 1962, a fatal shooting occurred at appellee's cabin in Beatty, Oregon, a small village in the Indian Reservation in Klamath County. When officers from the Klamath County Sheriff's office arrived in response to a call from appellee's wife, they found the body of the deceased Tony Moore in a chair, and the appellee lying face down asleep on a bed.

The officers aroused appellee and he testified (Trial transcript, p. 25) to the following:

> "A. He staggered around and finally got the pipe filled and looked at me and he said, 'I've got a gun and I'll shoot your guts out, you son of a bitch'.
>
> Q. Then what happened -- where was he when he said that?
>
> A. Standing by the bed.
>
> Q. Then, did he say anything else after that?
>
> A. Well, he raved on quite a little bit and turned around and observed Tony Moore sitting in the chair and he said, 'There is Tony' he says 'He got in my way and I had to kill him'. He said to me again, 'If I had my gun, I'd kill you too, you son of a bitch', that's the words he said."

Mrs. Walker, proprietor of the nearby cafe, was also present at that time and testified (Trial transcript, p. 102):

> "Q. Did you hear any statements made in Mr. Unsworth's presence during the time that you were in the cabin either by Mr. Unsworth or by others?
>
> A. Yes.

"Q. Would you relate those statements?

A. Well, Mr. Unsworth says, 'I shot Tony but I didn't mean to do it.'

Q. Any other statements?

A. He said, 'I meant to shoot her,' he meant his wife.

Q. Those are the exact words he used?

A. Well, he cussed at her."

None of the foregoing statements were elicited, but rather, according to all the witnesses were thoroughly spontaneous.

Appellee was taken into custody.

A few hours later, according to the testimony of Mr. Thomas, deputy district attorney, the following transpired in the jail barber shop (Trial Transcript, p. 220):

"Q. What time did this conversation take place?

A. It was approximately 5:00 in the morning, a.m.

Q. Would you relate that conversation?

A. I asked Mr. Unsworth several times as to what had happened and his answers were incoherent for the most part but he did say, "I killed him and I know you are going to get me." He asked many times to see his wife.

Q. What was his general attitude during the period of these conversations?

A. It was very aggressive and he was very wild and he shouted constantly and he was extremely noisy."

With respect to the same scene, Sheriff Brittan had testified (p. 208):

"A. He seemed to be a little wild and he seemed to be intoxicated."

Approximately twelve hours later, in the District Attorney's office, and after he was advised that anything he might say could be used against him, and that he had a right to call an attorney (Trial Transcript, p. 178), appellee gave a statement which was reduced to writing and signed. (Appendix A)

Before admitting the written statement into evidence, the court conducted a hearing out of the presence of the jury to determine its voluntariness. (Trial Transcript, p. 168) At the conclusion of the hearing (Trial Transcript, p. 174) the court stated:

> "THE COURT: The issue before the Court is whether it was given voluntary or not. The Court feels that this is a jury question. The objection is overruled. Bring in the jury, please."

and allowed the exhibit to be received into evidence, with testimony pertaining to such voluntariness offered in the presence of the jury.

Petitioner's counsel objected to its introduction on the grounds that petitioner was held a full day without counsel, (Trial Transcript, p. 174), but made no objection to the fact that the court did not independently find on the issue of voluntariness, nor did he request the court to do so.

Petitioner himself elected to take the stand, and by his testimony substantially affirmed the content of the written statement. Petitioner's account of the events would show that he had been threatened earlier in the evening by Indians, that he heard a commotion outside, stepped out into the yard with his rifle cocked, and came back in still holding the

hammer down. His wife shouted at him to put the gun down, he turned and because of the absence of a thumb on the hand controlling the mechanism of a rifle, inadvertently let go; the rifle discharged, shooting Tony in the abdomen, and apparently killing almost instantly. Dr. Nicholson testified that the wound was a contact wound.

The state presented its case on two theories; that petitioner intended to kill Tony, or that he inadvertently killed Tony intending instead to kill his wife.

The court delivered comprehensive instructions, although none on intoxication at the time of oral admissions. Defense counsel, while objecting to instructions on intoxication relating to the commission of the crime and instructions on transferred intent, (Trial Transcript, p. 362), did not request any additional instructions.

The jury returned a verdict of second-degree murder.

SPECIFICATIONS OF ERROR

I

The District Court erred in holding that petitioner did not waive his constitutional rights to the introduction of his written statement (Appendix A) by taking the stand and testifying substantially in accord with the statement.

II

The District Court erred in holding that petitioner was prejudiced by having to take the stand because the trial court did not make an independent determination of voluntariness of

the written statement (Appendix A) before allowing it in evidence.

III

The District Court erred in holding that petitioner's oral statements (infra p. 5-6) at the time of arrest and in the jail barbershop were inadmissible in that petitioner was too intoxicated to make a voluntary admission.

IV

The District Court erred in holding that petitioner was deprived of his constitutional rights when the court failed to instruct the jury to give less weight to statements made while under the influence of alcohol.

V

The District Court erred in finding that the oral statements made at the time of arrest provided the basis for a verdict of second-degree murder.

POINTS I and II
and
AUTHORITIES

By taking the stand and testifying to the same matters contained in his written statement, petitioner waived any objections he may have had to its introduction into evidence, and any rights he may have had to a judicial pre-determination of voluntariness.

Bell v. People, ____ Colo ____,
406 P2d 681 (1965)

People v. Skidmore, 69 Ill App2d 483,
217 NE2d 431 (1966)

State v. Dotson, 239 Or 140, 396 P2d 777 (1964)

State v. Frazier, ___ Or ____, 418 P2d
841 (1966)

Washington v. People, ____ Colo ____, 405 P2d 735, (1965)
cert. den. 383 US 953, 16 L Ed2d 215, 86 S Ct 1217

The District Court held:

> "I do not share the view that since Unsworth testified substantially in accord with his written statement, the statement was admissible regardless of whether he had been afforded his constitutional rights. Had Unsworth received a hearing outside the presence of the jury on the voluntariness of the oral and written statements, the State may have been unable to make a prima facie case, and it would have been unnecessary for Unsworth to have taken the stand." [District Court opinion, p. 8]

In support of its position that subsequent testimony to the same effect waives objections to the admission of a written statement, the Oregon Supreme Court relied on its holding in an earlier case, State v. Dotson, 239 Or 140, 396 P2d 777 (1964).

The theory, however, is amply supported by decisions from other jurisdictions. In Washington v. People, ____ Colo ____, 405 P2d 735, 738, cert. den. 383 US 953, where petitioner sought relief on the grounds that pre-trial statements were taken in violation of his constitutional rights, the Court held:

> "Moreover, and completely decisive is the fact that Washington took the stand himself, and repeated substantially the same story he had told to Cloud. * * * This situation was not one where he was required to take the stand in order to refute the effects of his pre-trial statements. Clearly, when the defendant elected to repeat to the jury his pre-trial statements, he waived every objection he might have urged to other proof by the prosecution of the same or similar statements."

See also Bell v. People, ____ Colo ____, 406 P2d 681 (1965).

An analysis of the situation itself supports the holding that appellee could not have been prejudiced by the introduction of the statement. The facts established a fatal shooting at the Unsworth cabin which, at the time, was occupied by only three persons. It is entirely predictable that Mrs. Unsworth would deny having fired the rifle. Assuming further, with little hesitancy, that the physical evidence would show the wound was not self-inflicted, it is equally predictable that suspicion would fall on appellee.

At this point, appellee had three alternatives; he might have refused to give a statement at all; he might have given a statement tending to show the shooting was intentional; or he might, as he in fact did, give an explanation consistent with the defense of pure accident.

Had Unsworth given no statement at all, or had the statement been kept out of evidence, the matter would have gone to the jury on the balance of the testimony and evidence that

the transcript has to offer. Whether or not Unsworth's exculpatory statements were better left unpresented is a matter of pure speculation. But in the absence of a clean showing that his story of accidental shooting was actually prejudical, common sense unequivocally indicates otherwise.

Again, had the statement been incriminating, and Unsworth required to take the stand either to refute it or in contradiction in crucial particulars, the jury would have been confronted with a choice inevitably more prejudicial to the appellee.

When Unsworth took the stand and repeated the same exculpatory version as contained in his statement, we do not see, with respect nevertheless to the opinion of the District Court, either why it was necessary to do so (except to make his point more graphically), nor how he was prejudiced in any way at all.

Any further analysis merely belabors the point needlessly. Nor do the courts find the proposition that constitutional rights are waived under such circumstances any more than self-evident. In People v. Skidmore, 69 Ill App 2d 483, 217 NE2d 431, 433 (1966) the court held:

> "Secondly, defendant objects to the fact that the court admitted the incriminating, signed statements given by the defendant to the police officers and the assistant state's attorney upon the grounds that constitutional privileges were violated because he was not afforded right to retain counsel, nor warned of his constituional rights. * * * we find defendant has no basis for this complaint in view of the fact that he himself took the witness stand and practically in detail reiterated under oath in the trial the matters contained

> in these written statements. He was, therefore, not prejudiced and cannot claim constituional privileges which he voluntarily waived by testifying."

Recently, the Oregon Court again in State v. Frazier, ____ Or ____, 418 P2d 841, 844 (1966) merely reiterated the principle without further elaboration.

Appellee is claiming, in effect, a denial of constitutional rights in two areas. First that the statement was taken in violation of his rights (and admitted into evidence); and second, that the court did not independently determine voluntariness before allowing the jury to see it. However, in this particular situation, as in most, the concepts are inseparable and the distinction academic.

It is respectfully submitted that when appellee assumed the witness stand, he did so with competent counsel and of his own will; that by reiterating his prior statements he waived any and all constitutional rights he may have had with respect to the introduction into evidence of the statement.

POINT III and AUTHORITIES

Appellee's oral statements made at the time of arrest, and in the jail barber shop were not inadmissible, even though appellee was intoxicated at the time.

Ballay v. People, ____ Colo ____, 419 P2d 446 (1966)

Bell v. United States, 60 App DC 76, 47 F2d 438 (1931)

Roper v. People, 116 Colo 493, 179 P2d 232, 233 (1947)

Mergner v. United States, 79 App DC 373,
147 F2d 572 (1945)

Morton v. United States, 79 App DC 329,
147 F2d 28 (1945)

People v. McQueen, 274 NYS2d 886,
18 NY2d 337, 221 NE2d 550 (1966)

Peters v. Commonwealth, ____ Ky ____,
403 SW2d 686 (1966)

26 Words and Phrases, Permanent Edition 527

69 ALR 2d 362

All witnesses are in substantial accord that at the time the two groups of oral statements were made by appellee, he was drunk. The District Court held:

> "The undisputed evidence shows that Unsworth at the time of his arrest was too intoxicated to make a voluntary statement and that the statements he made were 'the product of a mind benumbed or confused by alcohol, made at a time when the defendant himself had no understanding or realization of what was going on or what he was saying,' and therefore were inadmissible. McAffee v. United States, D.C. Cir. 1940, 111 F.2d 199, 200.
>
> "In my opinion the failure of the trial court to exclude the oral statements made by Unsworth at the time of his arrest deprived him of due process. * * *" [District Court opinion, p. 9]

We respectfully submit that the statements made, intoxicated or sober, were thoroughly spontaneous, and for that reason, thoroughly voluntary. The record shows no taint of coercion at any time. It may be that the issue with respect to these statements is one of credibility rather than voluntariness.

A statement made unreliable by coercive measures, and allowed in evidence, may violate a constitutional right.

But we argue that a question of reliability or credibility arising solely from intoxication goes merely to the weight to be given to the statements -- and that no due process question should arise as to its admissibility.

Essentially this, the majority rule, holds that intoxication alone, short of intoxication amounting to or resulting in mania, does not render confessions, admissions, or statements inadmissible. The earlier cases are collected and annotated in 69 ALR2d 362, including some federal cases. See Bell v. United States, 60 App DC 76, 47 F2d 438 (1931); Mergner v. United States, 79 App DC 373, 147 F2d 572 (1945); and Morton v. United States, 79 App DC 329, 147 F2d 38 (1945).

Later cases appear not to have deviated from this rule. The court held, in Peters v. Commonwealth, ____ Ky ____, 403 SW2d 686, 689 (1966):

> "The fact that a person is intoxicated does not necessarily disable him from comprehending the intent of his admissions or from giving a true account of the occurrences to which they have reference. There is nothing in the record to indicate that because of his intoxication appellant was in a maniacal state. It is our view, too, that the jury could reasonably conclude appellant was not so intoxicated as to be unconscious of the meaning and effect of the words contained in his statement."

And see, to the same effect, Ballay v. People, ____ Colo ____, 419 P2d 446, 448 (1966), and Roper v. People, 116 Colo 493, 179 P2d 232, 233 (1947).

It may well be that most persons under the influence of alcohol have a tendency to bluff, exaggerate, threaten or swagger. This is by no means universal. Mr. Unsworth,

although he testified himself, put on no testimony at all either to deny his oral statements, explain them, or to give them an interpretation reflecting his personal tendencies during intoxication to exaggerate or bluff.

The jury, then, was left to color the statements in any manner dictated by its individual experience.

> " * * * It may well be that if there were evidence that the confessions had been compelled or coerced, evidence of intoxication would be relevant in conjunction therewith. Upon the other hand, in the absence of coercion, the jury might apply the ancient maxim in vino veritas." People v. McQueen, 274 N.Y.S.2d 886, 18 N.Y.2d 337, 221 NE2d 550, 554 (1966).

Nor does the evidence show that appellee's intoxication amounted to "mania" so as to render the statements inadmissible.

> "'Mania' is a form of insanity accompanied by more or less excitement which sometimes amounts to fury. The person so affected is subject to hallucinations and delusions and is impressed with the reality of events which have never occurred and things which do not exist and his actions are more or less in conformity with belief in these particulars. Dyar v. Dyar, 131 SE 535, 54, 161 Ga. 615." 26 Words and Phrases, Permanent Edition, 527.

If appellee was suffering from hallucinations or delirium, it is neither apparent from the record, nor easily inferred from the events of the evening.

In the absence of such a positive showing, it is submitted that appellee's statement made under the influence of wine were properly admitted into evidence.

POINT IV and AUTHORITIES

The trial court was not in error in failing to instruct the jury to give less weight to statements made while intoxicated, in the absence of a request for such instructions.

Claypole v. United States, 280 F2d 768 (9th Cir 1960)

Esters v. United States, 260 F2d 393 (8th Cir 1958)

State v. Ellis, 232 Or 70, 374 P2d 461 (1962)

State v. Hudgens, ____ Ariz ____, 423 P2d 90 (1967)

State v. Murray, 238 Or 567, 395 P2d 780 (1964)

Ortis v. United States, 358 F2d 107 (9th Cir 1966), cert. den. 385 US 861 (1966)

Williams v. United States, 358 F2d 325,329 (9th Cir 1966)

Federal Rules of Criminal Procedure, Title 18 U.S.C. Rule 30

Oregon Revised Statutes 17.510

Appellee's trial counsel did not, according to the transcript and records available request any special instructions with respect to intoxication at the time of the oral admissions.

In the absence of such a request, the court is not bound to give any such instructions, and it is not reversible error not to do so. In fact, this principle is reflected in the Federal Rules of Criminal Procedure, Title 18 U.S.C., Rule 30 [as amended February 28, 1966, effective July 1, 1966]:

> "* * * No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. * * *" (Emphasis supplied)

In Williams v. United States, 358 F2d 325, 329 (9th Cir 1966) where the trial judge did not properly instruct the jury concerning admissions and statements which were admitted into evidence, the court denied relief on this assignment of error, saying:

> " * * * No objection was interposed by appellant to the instructions which were given nor was any other instruction proposed by appellant.
>
> "It is also to be noted that no question was raised by appellant at the trial that he was denied the assistance of counsel, or that he was not advised of his right to remain silent. In these circumstances we find no merit in appellant's contention."

And again, in Ortiz v. United States, 358 F2d 107, 109 (9th Cir 1966), cert. den. 385 US 861 (1966), where an informer's testimony may have been suspect:

> "Appellant next contends that the failure of the court to give on its own motion a cautionary instruction that the informers' testimony should be viewed with great care and caution and carefully scrutinized was plain error. Appellant admits that the instruction was not requested by him. Under the circumstances we see no error in the failure to give such an instruction."

The same principle appears repeatedly in other jurisdictions, both by statute and by case law. Oregon Revised Statutes 17.510; Esters v. United States, 260 F2d 393 (8th Cir (1958); Claypole v. United States, 280 F2d 768 (9th Cir 1960);

State v. Murray, 238 Or 567, 395 P2d 780 (1964); State v. Ellis, 232 Or 70, 374 P2d 461 (1962); State v. Hudgens, ____ Ariz ___, 423 P2d 90 (1967).

Even assuming, however, that such a failure to instruct, without a request, may be error so great as to amount to a denial of due process, an examination of the record itself would show enough instructions, considered as a whole, to caution the jury.

On page 356 (Trial Transcript), the Court instructed:

> "Regarding the purported statements made by the defendant, the law provides that an admission of a defendant, whether in the court of a judicial proceeding or to a private person, cannot be given in evidence against him when made under the influence of fear produced by threats and when not freely or voluntarily made. You have heard the evidence of the facts and circumstances surrounding the statements and you are to determine from this evidence whether the statement was made under the influence of fear produced by threats or whether it was made freely and voluntarily. If the statement is voluntary, you are to give it whatever weight you feel it is entitled to, taking into consideration all of the facts and circumstances under which it was made. In other words, you are the exclusive judge of the weight and credibility of any admissions."

The foregoing instruction followed in the context of instructions, on p. 350 (Trial Transcript) which had provided:

> "You are not restricted to a consideration of facts directly proved, nor are you expected to lay aside matters of common knowledge or your own observations and experiences in the affairs of life, but, on the contrary, you may give effect to such inferences as common knowledge or your personal observation and experience may reasonably draw from the facts directly proved and you may apply to conflicting testimony the test of your own judgment and experience."

Appellee was not denied due process by failure of the Court to instruct specially on intoxication.

POINT V

Unsworth's oral statements did not provide the only basis for a second-degree conviction.

Since the District Court did not specifically hold that the oral statements, per se, without the complications of intoxication, were insufficient to convict appellee, we do not at this time argue the sufficiency of the evidence.

However, the record shows that the jury had more to weigh than just the statements in question.

The state, in its rebuttal, produced the testimony of Deputy Sheriff Jack Hutton (Trial Transcript, beginning p. 26). Mr. Hutton testified that he had gone to the Unsworth home, had heard Unsworth threaten injry to his wife and specifically (p. 328):

"MR. McKEEN:

Q. When was the next time that you visited the Unsworths?

A. Three days later, the 18th.

Q. That was the 18th of November, 1961?

A. Yes.

Q. What if anything was said by Mrs. Unsworth -- Mr. Unsworth?

A. He told me that if I didn't get him out of there -- her out of there that he was going to kill her."

The state then called Lavina Henry, a neighbor of the Unsworths. (Trial Transcript, beginning p. 333). Mrs. Henry recounted several incidences of violence and fighting between the Unsworths, some of which were stricken. However, the unstricken portions again provided a basis from which the jury could find a malicious intent on the part of appellee towards his wife.

The jury then was positioned to weigh appellee's account of the incident as contained in his statement and testimony against his oral admissions and the testimony of the state's rebuttal witnesses.

It is apparent, with whatever factors played apart in the jury's consideration, that the latter offered greater credence.

CONCLUSION

It is respectfully urged that the District Court's Findings and Order be reversed, and the writ be denied.

Respectfully submitted,

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Assistant Attorney General

Attorneys for Appellant

Certificate

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

HELEN B. KALIL
Assistant Attorney General

STATE OF OREGON

COUNTY OF KLAMATH

I, WILLIAM UNSWORTH, depose and say that the following statement is made freely and voluntarily and is true; that I have not been offered rewards or immunity of any kind; that the contents of this affidavit may be used at the trial of any action arising out of the facts set out herein; that this statement was made to Deputy District Attorney, J. R. Thomas, in the presence of Murray Britton, Sheriff of Klamath County, Oregon; Delbert Summers, Deputy Sheriff of Klamath County, Oregon, and Suzanne Cromwell, Stenographer, at 4:40 p.m., in the office of the District Attorney for Klamath County, Oregon, April 16, 1962.

J. R. THOMAS: Well, Bill I want you to understand that I am a Deputy District Attorney, and we are talking to you about a death of a fellow that we know as Anthony Moore, that occurred in Beatty in apparently the cabin that you and Mrs. Unsworth live in. That whatever you say can be used against you. You understand also that you have the right to call an attorney.

BILL UNSWORTH: I think I have the right to call an attorney, after all it is my life that is going to die too. It was not intentional, it was accidental. I went to the door and I had been threatened a couple times and I didn't know how many people were there. I had the gun in my hand and I cocked it and then when I saw that there wasn't anybody there and I was holding the hammer with my hand and I turned it back on safety or to safety. I turned around and my wife yelled at me and said, "put that damn thing down." When she hollared I was turned around towards Tony back into the kitchen. I had already

pulled the trigger and when she screamed at me I just let go of the trigger, or I mean the hammer.

Q: When you refer to a gun, which kind do you mean?

A: 30-30 Winchester.

Q: I want to show you a gun in the room and ask you if this is the one?

A: I guess this is it. I couldn't swear to it.

Q: Do you know it by serial number?

A: No. I didn't take notice of the serial number.

Q: Del Summers: On this gun is written 'Andy'. Do you know this was on it?

A: No, I didn't.

Q: Why don't you put your initials on it?

A: I don't know if this is the gun.

Q: Well, just put it on the gun so that we can identify it as the one in this statement. Where did you get the gun?

A: Bill Walker.

Murray Britton:
Q: Well, Bill Walker identified the gun last night as being the one he gave you.

A: Well he should know better than I do.

Murray Britton:
Q: We showed this gun to Bill Walker and he said this was the gun. Why don't you mark it so that we can identify this gun as the one in the statement?

A: There is an "X" on the left side. B.U. will be just as good. B. U. Bill Unsworth.

Q: Now go ahead with the incident in the cabin.

A: I just went to the door and I didn't know --

Q: How long had Tony been there that night?

A: Well, I don't know. We were sitting and talking and one thing and another and the dogs made quite a commotion and like I say when I turned away from the door and when the wife screamed at me that was it. I pulled the trigger and let the hammer down.

Q: How were you holding the gun?

A: Maybe I can show you better than I can tell you. Like I say, I pulled the trigger to let the hammer down. I had it in my left hand. I started to put the gun away and my wife hollared, "put that damn thing down" and like I say I had already pulled the trigger and I guess I just let my hand off the trigger and it just fired. I couldn't believe it.

Q: Let me ask you this? We had a report that you called someone about 9:30 and told them to get over there that there was going to be a killing. That you phoned from a telephone booth around Cookie's Tavern.

A: No, I didn't know there was going to be a shooting.

Q: Did you call the deputies in Bly?

A: Not that I know of.

Q: Do you recall making this statement to them?

A: I had a lot of trouble and I was upset. I don't remember you coming out and getting me. I remember when we got here and I know I was kind of beligerent and I told you I wasn't going to talk and there is another lapse and I can't account for.

Q: Now, the autopsy indicated that the wound was a contact wound. That the barrel was against him.

A: Well, I guess it was only about a foot from him and where I killed him.

Q: Wouldn't it have hit the arm of the chair?

A: Well, the whole thing was like this. The door was here and I just turned around and that was when the wife hollared and was enough room that it was about a foot from him. It would have been that much space between the gun and him. (Indicating)

Q: How far do you mean? A yard or so.

A: Well, just right from him to me. (Indicating Sheriff) I can't believe I had shot him. I opened his shirt and I seen a red spot on him and then everything went to hell.

Q: What did you do when you saw he was shot?

A: I don't know what happened. Everything is pretty gone. I don't know.

Q: Do you remember Jack Hunton and Jim Conroy coming in with Mr. and Mrs. Walker and your wife?

A: I don't remember.

Q: What is the next thing you remember?

A: Just back here in the jail. Well, you introduced yourself as the District Attorney and you talked to me.

Q: Did you have a fight with Tony?

A: Hell no. I ask him up for dinner and we were working together and I said come on over to the house and have a bite to eat.

Q: Had he been staying at your place?

A: No. He had been over at Jimmy's, next door.

Q: What time did he come over to your place?

A: I don't know.

Q: Did you have anything to drink?

A: Wine.

Q: How much, do you know?

A: I don't know. It was either a fifth or a

half gallon and we just stopped at the store and took it home. We were sitting here drinking when all the commotion come on and the dogs made all the racket.

Q: You and he bought the wine together?

A: Yes.

Q: What store?

A: There is only one store. Crawfords and it was Crawfords Store. There is only one store and it is the only one there.

Q: Well, Bill, I want to ask you again about this. Do you remember making a phone call to either of the deputies in Bly that someone was going to get killed or something to that effect?

A: No.

Q: Do you remember being down there with the rifle?

A: No.

Q: What time did you start drinking?

A: About 4:00 o'clock. We worked over there cleaning up the yards. When we got done we went and got a jug and were going to have supper and have something to drink. Now you would have to ask my wife when we came home. She can tell you.

Q: Well, let me tell you this. The autopsy report indicates the wound that killed Anthony Moore was right up against his stomach. Now you have said you were approximately one yard away. Are you telling us everything?

A: Well, the uproar and everything. It could have been two or three inches. Well it isn't like you would notice in an uproar. To start with, I turned and judging from the door and where he was sitting I would turn I was a good ways from him and on the other hand, it might be that when I turned around and brought it might have been right up against him. I don't know.

(Deputy District Attorney J. R. Thomas left the room for approximately 1 minute. No conversation took place at this time)

Q: Now, I want you to tell us again about how far the rifle was when you shot him.

A: Like I told you. I was standing where the gun might have been a couple two or three inches. I don't remember.

Q: Do you remember when the two deputies Jack Hunton, Jim Conroy, Mr. and Mrs. Walker and your wife came to the cabin?

A: No.

Q: Do you remember saying anything to them about what had happened?

A: I don't remember anything from the time the gun went off and when we were sitting down here.

Q: How much had you been drinking that day? Just the fifth or half gallon of wine?

A: That was all. I didn't even have any money. I had to wait until Bill and Cookie came home to get some money.

Q: How many were sharing the wine?

A: Three. Tony, me and my wife.

Q: Tony, you and your wife?

A: Yes.

Q: This was all you had yesterday that you can remember?

A: Yes.

Q: I want to ask you again Bill. Did you have a fight with Tony?

A: Great God no. We didn't have any fight. I invited him to the house to have something to drink and eat.

Q: We said some people told us that you were around Cookies' with the rifle about 9:30.

A: No, I don't remember.

Q: Do you remember being down there before the gun went off?

A: Well, I worked for him during the day.

Q: What time did you quit work?

A: You will have to ask my wife. I don't remember.

Q: Can you give us an estimate?

A: My wife would know. She pays attention when I come home and she tries to have meals on time and so on and so she would know, where I don't.

Q: What do you do for Bill and Cookie Walker?

A: Well, I was breaking up the yard and cleaning up the yard. Now then if you don't mind could I talk to my wife. I mean after all I am not going to try to run off and I have tried to be cooperative. It is not going to be too long. I think I ought to have a lawyer of some kind and I will try to go along with you and do anything agreeable and Red here knows that I try to go along with everything and I will try to help you in any way I can and I would like to talk to my wife if I can.

Q: It is now 5:05 p.m. by my watch. Has anyone here or anyone else threatened you?

A: Hell no. Red wouldn't do that.

Q: Is this a voluntary statement?

A: Yes. This is a voluntary statement no one has threatened me all you want to know is what is the score. Nobody has threatened me and if they did they wouldn't get anything out of me. I am trying to do everything to help.

Q: Has anyone promised you any rewards or immunity, Bill?

A: Hell no. Red wouldn't do that. I told Red, if there is anything I do wrong then I am man enough to stand up and face up to what I get.

This statement consisting of five pages and this one, was given in the Office of the District Attorney for Klamath County, Oregon, April 16, 1962, at 4:40 p.m. and ended at 5:00 p.m.

This statement has been read by me and the truth as nearly as I can recall.

/s/ W.E. Unsworth

WITNESSES:

/s/ Murray Britton

/s/ Delbert Summers

/s/ J. R. Thomas

/s/ Suzanne Cromwell